

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Civil Miscellaneous Appeal Nos.1347 of 2018 and 41 of 2019

COMMON JUDGMENT :

These Civil Miscellaneous Appeals are filed under Section 104 read with Order 43 Rule 1(r) of Civil Procedure Code, 1908 challenging the order dt.30.11.2018 passed in I.A.No.1061 of 2017 in O.S.No.178 of 2017 on the file of Special Judge for Trial of Offences under Schedule Castes and Schedule Tribes (Prevention of Atrocities Act, 1989) -cum- V Additional Sessions Judge, Medak, at Sanga Reddy.

2. The appellants in C.M.A.No.1347 of 2018 are defendant nos.1 to 3, 5, 7, 8, 11, 13 and 17 and appellants in C.M.A.No.41 of 2019 are defendant nos.9, 10, 15 & 18 in the above suit.

3. The said suit was filed by 1st respondent / plaintiff against the eighteen defendants to restrain the defendants and their men, agents and persons claiming through them from ever interfering with the administration / functioning / possession of the suit schedule property belonging to the plaintiff in any manner.

4. The suit schedule property is described as:

*“All that piece and parcel of New Jerusalem, House of Worship,
H.No.4-7-187, with Survey No.207/2 of extent Ac.0.20 guntas,
Manjeera Pipeline Road, Opposite to I.T.A., Sangareddy Town*

*(Mandal and District), Telangana State, including living quarter
within specified boundaries.”*

5. The parties will be referred to in this order as per their array in the suit.

CONTENTIONS OF 1ST RESPONDENT/PLAINTIFF:

6. The 1st respondent / plaintiff filed the suit O.S.No.178 of 2017 through one R. Veerachary, who claimed to be an authorized person pursuant to an authorization letter given by the plaintiff-Society on 12.11.2013.

7. In the plaint, the plaintiff contended that it is a Society registered under the provisions of the Andhra Pradesh Societies Registration Act, 2001; that it is controlling (1300) Churches in the States of Telangana and Andhra Pradesh; that it has got every right to appoint and transfer pastors, God servants, employees in the Churches owned and possessed by it; that the 2nd defendant was appointed by it long back as a pastor of the suit schedule premises, and he was conducting prayers and looking after the affairs of the suit schedule Church on the instructions of the plaintiff; that the plaintiff in the process of managing the affairs of various Churches owned and possessed by it had transferred the 2nd defendant on 01.08.2017 to House of Prayer, Kamalanagar, E.C.I.L., Malkajgiri District, Telangana State; that he received the transfer order and went there to the House of Prayer at Kamalanger, but expressed his disinclination to

the plaintiff to join there, since he was conducting prayers in the suit schedule premises; the plaintiff had appointed one E. Mathews as pastor in the suit schedule premises on 01.08.2017; he immediately joined and started conducting prayers, but the 2nd defendant did not vacate the residential quarter and 2nd defendant came up with the story that he (i.e., the 2nd defendant) had registered a Society for the suit schedule property.

8. The plaintiff stated that a Suit O.S.No.999 of 2014 had been filed before the XXV Additional Chief Judge, City Civil Court, Hyderabad, and injunction was granted by the said Court on 01.06.2017. Further it is also contended the 2nd defendant had no right and authority over the suit schedule property on the ground that he formed a new Society, i.e., the 1st defendant-Society, and by merely registering the 1st defendant-Society, the 2nd defendant did not get new rights to hang on to the suit schedule property; that defendant nos.2 to 11 are members in the 1st defendant-Society created by 2nd defendant; and defendant nos.12 to 18 are supporters of defendant nos.2 to 11.

9. It is contended that the 2nd defendant, who is only an employee of the plaintiff-Society, disobeyed the transfer order dt.01.08.2017 issued to him on the ground that he created the 1st defendant-Society.

10. It is also contended that the Prayer Hall and residential quarter are different and the Prayer Hall is being occupied and prayers are being conducted by the new Pastor appointed by the plaintiff, but

defendant nos.2 to 11, who formed the new Society are opposing the pastor appointed by the plaintiff and they are questioning the right and authority of the Pastor to conduct prayers in the Prayer Hall.

11. It is alleged that defendant nos.2 to 18 were threatening the Pastor appointed by the plaintiff not to conduct prayers, but he was able to continue his services because of support of the other worshippers; that on 12.11.2017, all defendants man-handled the Pastor, pushed him away and created panic in the minds of the worshippers and also took away valuable documents from the Office of the Church.

12. It is contended that plaintiff purchased the suit schedule property on 07.08.1989 through Document bearing No.35 / 1990, and it consists of Ac.0.20 guntas, equivalent to 2420 Sq.yds., and constructed a Church therein with a residential quarter; and if the defendants are not restrained by way of a perpetual injunction, the plaintiff cannot conduct the affairs of the Church, and worshippers would suffer.

THE WRITTEN STATEMENT OF DEFENDANT No.s 1-11

13. Written Statement was filed by defendant nos.1 to 11 denying the said contentions. They contended that the suit is barred by the provisions of the Telangana Societies Registration Act, 2001 read with Section 9 and Order VII Rule 11(d) Civil Procedure Code, 1908. According to them, the plaint allegations and alleged cause of action

had no nexus with the suit relief or subject matter of the suit, and the suit for injunction *simpliciter* is not maintainable.

14. They pleaded that there is a serious dispute with regard to the very existence of the plaintiff-Society itself; that there were orders passed in Civil Revision Petition No.2692 of 2016 wherein the existence of plaintiff -Society was disbelieved; and that the plaint also is liable to be rejected under Order VII Rule 11(b) (c) of Civil Procedure Code, 1908.

15. They contended that the plaintiff did not file a single document to show that 2nd defendant is an employee of the plaintiff-Society; that the plaint did not disclose any cause of action against defendant nos.1 to 18; that the plaintiff withheld material documents including registered bye-laws of the plaintiff-Society, and so it is not entitled to equitable relief of injunction.

16. They also alleged that there is no power or provision for appointment of an authorized person to represent the plaintiff-Society, and the said authorized person Sri R. Veerachary had no authority to file the suit on behalf of the plaintiff-Society; that the Governing Council had nothing to do with the plaintiff-Society in view of its own bye-laws and the provisions of the Act.

17. It is stated that defendants had nothing to do with O.S.No.999 of 2014; that the said suit relates to the property in Hyderabad and not

to the plaint schedule property and any orders passed therein do not apply to the defendants.

18. According to defendant nos.1 to 11, the 1st defendant-Society is an independent legal person and the 1st defendant and its members have been in exclusive possession and enjoyment of the plaint schedule property which is established by electricity and telephone bills and receipts in respect of the suit schedule property filed by defendants.

19. It is contended that the plaintiff did not file any document to show that Sri B. Timothy, who allegedly appointed R. Veerachary as authorized person, had got anything to do with the Society, or that the plaintiff-Society is functioning at any point of time by filing any document or proceedings contemplated by Sections 10 to 20 of the Act.

20. They contend that R. Veerachary is not a Christian and he was convicted in criminal cases involving moral turpitude and as per documents filed by him, he is a rowdy-sheeter; that he was working as a clerk in the Heavy Water Project at Munuguru and was removed from service on the ground of smuggling red sandal; that he cheated many persons and filed I.P.No.18 of 2014 on the file of the Principal Senior Civil Judge, at Kothagudem, Khammam District; that this suit is filed also as part of his illegal and immoral activities; and so he is not entitled to any equitable relief, like injunction.

21. The allegations made by the plaintiff-Society were denied and it was contended that the defendants or their Church had nothing to do with the plaintiff-Society; that defendants had a right to form a Society of their own for the purpose of exercising their religious rights, including their right to offer prayers; that the 2nd defendant is not an employee of the plaintiff-Society, and the said allegation was invented for the purpose of the suit.

22. According to defendants 1-11, the plaint schedule property is not an agricultural land as shown in the sale deed dt.07.08.1989 annexed to the plaint, but it is a non-agricultural property consisting of buildings exclusively belonging to the defendants, and the 1st defendant-Society and plaintiff cannot make claim in respect of the said structures. They allege that the structures were constructed by defendants, and not by the plaintiff; that defendants have been in possession and the suit was filed to grab the suit schedule property under the guise of injunction, and such injunction cannot be sought against defendants, who are true owners.

I.A.No.1061 of 2017

23. Along with the suit, the plaintiff filed I.A.No.1061 of 2017 under Order 39 Rules 1 and 2 of Civil Procedure Code, 1908, praying the Court to grant *ad interim* injunction restraining the defendant nos.1 to 18 and their men, agents and persons claiming through them from interfering with the administration / functioning / possession of

the suit schedule property, in any manner, and the petition schedule Church.

24. In the said I.A., the plaintiff reiterated the contentions raised in the plaint, and marked Exs.P.1 to P.38.

25. Counter-affidavit was filed by defendants adopting the contentions raised in the written statement filed by defendant nos.1 to 11, and they marked Exs.R.1 to R.15.

THE ORDER DT.30.11.2018 IN I.A.NO.1061 OF 2017

26. By order dt.30.11.2018, the Court below allowed I.A.No.1061 of 2017 in O.S.No.178 of 2017.

27. After referring to the contentions of parties, the Court below, in its order stated that none of the documents filed by defendants show that they are the owners of the petition schedule property or that they have constructed the Church in the petition schedule property; that on the contrary, Ex.P.1-Sale Deed, filed by plaintiff indicates that Bro. Bakht Singh purchased the petition schedule property in the name of the plaintiff, i.e., that he purchased the same for the benefit of the plaintiff-Society and for the purpose of spiritual benefit.

28. It held that the 1st defendant-Society was formed only in the year 2014, much later to the purchase of the property by Bro. Bakht Singh, for the benefit of plaintiff-Society under Ex.P.1.

29. It rejected the contention of the defendants that the boundaries of the suit schedule property did not tally with the boundaries of the property mentioned in Ex.P.1-Sale Deed on the ground that the sale deed was executed in the year 1971, and in the intervening period there may be other transfers of neighbouring properties; and so, the boundaries of the plaint schedule property would naturally be different.

30. After referring to the contentions of 2nd defendant that he is in possession of some of the petition schedule properties, it held that there is no document or proof filed regarding the same and also indicating the extent he occupied or is in his possession; and concluded that possession of the 2nd defendant is not legal possession since it is not supported by any authenticated document.

31. It referred to the transfer orders issued by the plaintiff-Society and held that though the 2nd defendant was transferred from the petition schedule Church to another Church, he did not join there and is creating troubles in conducting prayers by the new Pastor, and so, the alleged occupation of the plaint schedule property by the 1st defendant-Society is not legal.

32. It referred to the order dt.20.02.2017 passed in Civil Revision Petition No.2692 of 2016, passed by this Court (Ex.R.14), and observed that S.L.P. (Civil) No.8387 of 2017 was filed against the said judgment, and there was a direction to maintain *status quo* by

both parties. It therefore rejected the contention of the defendants and the plaintiff-Society is deemed to have ceased to be in existence.

33. It observed that even if the authorized person, representing the plaintiff, is a rowdy-sheeter, that cannot be a ground to refuse possession of the property to the plaintiff of the petition schedule property, since it is supported by Ex.P.1-Sale Deed.

34. It therefore held that the 2nd defendant failed to establish his possession in support of the petition schedule property and that the documents filed by plaintiff clearly establish that it is the plaintiff-Society which is in possession of the suit schedule property.

35. It further held that the documents filed by the defendants such as electricity bills, etc., would not create any right in their favour since the 2nd defendant acted as a Pastor prior to the present Pastor and it is not surprising if he possesses some bills in his hand; and so the contention of defendants that they are in possession and such possession is illegal, cannot be accepted.

THE PRESENT CIVIL MISCELLANEOUS APPEALS

36. Assailing the same, the present Civil Miscellaneous Appeals are filed.

37. Heard Sri Vedula Srinivas, Senior Counsel appearing for Sri K. Pradeep Reddy, counsel for the appellants in C.M.A.No.41 of 2019; and Sri M.V. Durga Prasad, counsel for appellants in

C.M.A.No.1347 of 2018; and Sri A. Sudarshan Reddy and Sri S. Satyanarayana Prasad, Senior Counsel for 1st respondent / plaintiff in the Appeals.

38. The contentions of counsel for parties will be dealt with in the discussion so as to avoid repetition.

THE POINTS IN ISSUE:

39. In view of the rival pleadings and contentions, the following points arise for consideration in these CMAs:

- (a) *“whether the suit filed on behalf of the 1st respondent/plaintiff by its alleged authorized person R.Veerachary is maintainable prima facie?”*
- (b) *“Whether prima facie the plaintiff/1st respondent can be said to be in existence as on the date of filing of the suit?”* and
- (c) *“Whether the plaintiff-Society is in possession prima facie of the plaint schedule property on the date of filing of the suit?”*

40. The suit being one for perpetual injunction, and the I.A.No.1061 of 2017 having been filed under Order 39 Rules 1 and 2 C.P.C. for a temporary injunction pending disposal of the suit restraining the defendants from interfering with the administration / functioning / possession of the suit schedule property, pending disposal of the main suit, it is important for the plaintiff to establish *prima facie* case in it's favor, that balance of convenience is in

plaintiff's favour and irreparable injury would be caused to it if temporary injunction is not granted.

41. This principle was laid down in **Gujarat bottling Co. Ltd. vs. Coca-Cola Company¹**, where the Supreme Court observed as under :

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience” lies. [See: Wander Ltd. v. Antox India (P) Ltd.¹⁵, (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

¹ 1995 (5) S.C.C. 545

... ..

47. *In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”*

42. In the context of a suit for injunction relating to immoveable property where interim injunction is prayed pending suit, how the above factors are to be established is laid down in **Dalpat Kumar vs. Prahlad Singh**² where the Supreme Court declared:

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by

² (1992) 1 S.C.C. 719

itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

43. Since the principal relief in the suit filed by the 1st respondent / plaintiff Society is perpetual injunction in relation to the suit schedule property, it has to establish its possession of the suit schedule property on the date of filing of the suit.

44. In Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and Ors³, the Supreme Court held :

“The first Respondent-Plaintiff has filed the suit Under Section 38 of the Specific Relief Act seeking permanent injunction on the ground that he is in actual possession of the suit property. Grant of permanent injunction results in restraining the Defendant's legitimate right to use the property as his own property. Under

³ MANU/SC/0148/2019 dt.6.2.2019

Section 38 of the Specific Relief Act, an injunction restraining the Defendant from disturbing possession may not be granted in favour of the Plaintiff unless he proves that he was in actual possession of the suit property on the date of filing of the suit.”(emphasis supplied)

45. So, in the I.A.No.1061 of 2017, since it has sought for temporary injunction pending suit, plaintiff has to establish that it has a *prima facie* case, that balance of convenience lies in its favour and that irreparable injury would be caused to it if such temporary injunction is not granted.

46. Keeping these principles in mind, I shall consider the contentions of the parties.

Point (a) :

47. I shall first consider “*whether the suit filed on behalf of the 1st respondent/plaintiff by its alleged authorized person R.Veerachary is maintainable prima facie?*”

48. This contention assumes importance because the 1st respondent/plaintiff had filed the suit through R. Veerachary, terming him as “authorised person” pursuant to authorization letter Ex.P6/ dt.12-11-2013 issued by one B. Timothy, allegedly Chairman of the plaintiff –Society. The said letter states that there was a resolution passed by the plaintiff-Society in its Governing Body meeting held on 12-11-2013 authorizing the said R. Veerachary to represent the plaintiff-Society.

49. In para-2 of the written statement filed by defendant Nos.1 to 11, the plea regarding competency of Sri R. Veerachary to file the suit on behalf of the plaintiff-Society was specifically raised. They had also contended that he was a rowdy-sheeter involved in several criminal cases and equitable relief of injunction cannot be granted to the plaintiff represented by him.

50. In the impugned order, the Court below focused only on the latter part completely ignored the initial part questioning his capacity to represent the plaintiff-Society.

51. As per Section 19 of the A.P. Societies Registration Act, 2001, legal proceedings such as a suit, on behalf of a Society covered by the said statute, have to be initiated by the Committee or any Officer of the Society authorized in this behalf by its bye-laws. It reads:

“19.. Legal Proceedings :- (1) The Committee or any officer of the society authroised in this behalf by its bye-laws, may bring or defend any action or other legal proceeding touching or concerning any property or any right or claim of the society and may sue and to be sued in its name.”

52. The bye-laws of the plaintiff-Society have not been filed by the plaintiff in I.A.No.1067 of 2017.

53. Since the Committee of the plaintiff-Society has not filed the suit O.S.No.178 of 2017, and since there is no evidence that Sri R. Veerachary has been authorized by the bye-laws of the plaintiff-Society to file the suit, *prima facie* it has to be held that the

suit filed by the plaintiff-Society through Sri R.Veerachary, is not maintainable.

54. Learned counsel for respondents however contended that the Governing Body resolution dt.12-11-2013 is sufficient to enable Sri R. Veerachary to file the suit. This contention is without any merit because in the Act, there is no provision enabling the Governing Body of a Society to authorize, by a resolution, any individual to file the suit on behalf of the Society.

55. Alternatively, it was also contended that the provisions of Order XXX C.P.C. would apply for filing of suit. The said provision deals with filing of suits by or against firms and persons carrying on business in names other than their own.

56. When there is a specific provision in Section 19 of the Act dealing with this aspect, the said special provision would *prima facie* prevail over the general provision contained in the C.P.C., and the latter cannot be made applicable.

57. Therefore I hold that on point (a) that *prima facie*, the suit O.S.No.178 of 2017 filed by R. Veerachary on behalf of plaintiff-Society against the appellants and others is not maintainable; that the Court below failed to consider this aspect though specific contention was raised in the written submissions filed by defendants in the I.A. No.1061 of 2017 referring to Section 19 of the Act; and therefore the it's order cannot be sustained.

Point (b) :

58. I shall next consider “*Whether prima facie the plaintiff/1st respondent can be said to be in existence as on the date of filing of the suit?*”

59. It is important to note that an important contention was raised by the appellants / defendants that the 1st respondent / plaintiff is not physically in existence in para-1 of the written statement. This contention was based on Order dt.24.06.2009 in WP.No.16430 of 2008 passed by this Court. This order copy was also marked as Ex.P.28 by the plaintiff in the I.A.No.1061 /2017.

60. The said Writ Petition was filed by M/s. Indigenous Churches in India Trust, Hebron Church, Hyderabad and three others challenging the action of the Registrar of Societies in issuing a letter dt.19.02.2008 to the 2nd respondent therein, one Bro. G.T. Benjamin, that the plaintiff-Society, i.e., the Society of Trustees of Indigenous Churches in India, which was registered with Registration No.114 of 1971, is in vogue, in reply to a letter addressed to him by the Inspector General of Registration and Stamps, requesting information as to whether it is in vogue or not.

61. The petitioners in that Writ petition contended that that the plaintiff-Society was dissolved more than four years back by Resolution dt.23.03.2004 and all its assets and liabilities were transferred to the 1st petitioner in the Writ Petition . They sought

sought a declaration that the action of the Registrar of Societies in declaring, that plaintiff Society is still in vogue in his proceedings dt.19.02.2008 is illegal, without jurisdiction, power or authority and violative of fundamental rights guaranteed under Articles 14, 19(1) (c), 25, 26 and 300-A of the Constitution of India and contrary to the provisions of the Andhra Pradesh Societies Registration Act, 2001, the Indian Trusts Act, 1882 and the Income Tax Act, 1961 and consequently set aside the said proceedings.

62. It was the contention of the petitioners in the said Writ Petition that there was a Resolution of the Special General Body Meeting of the plaintiff-Society held on 23.03.2004 at 12:30 p.m. and it was resolved unanimously to dissolve the plaintiff-Society and to transfer the assets and liabilities, if any, to the 1st petitioner-Society in the said Writ Petition; that the said Resolution was communicated to the Registrar of Societies; and therefore, the plaintiff-Society stood dissolved as per the provisions of the A.P. Societies Registration Act, 2001.

63. It was contended by the Registrar of Societies that prior intimation of passing of such a Resolution was not given to him and so the Resolution was not in accordance with law.

64. This Court held in its order dt.24.06.2009 that such prior permission or leave of the Registrar of Societies was not required to convene a meeting of the Society for passing a Special Resolution for

its dissolution and that a resolution for dissolution is a right integral to the right to associate conferred by Article 19(1)(c) of the Constitution of India, and only intimation of the Resolution as to dissolution is required to be given to the Registrar of Societies because the formal existence of the Society is owed to the process of registration under the Act. It held that the Registrar had no say in the decision of dissolution of a Society and since he himself admitted that the plaintiff-Society conducted a General Body Meeting and passed a Resolution dt.23.03.2004 for its dissolution and intimated it to him on 24.03.2004, the formalities under Section 24 of the Act are complied with, and the dissolution of the plaintiff-Society was formalized in accordance with law.

65. The Court held that *the plaintiff-Society stood dissolved on the intimation having been made to the Registrar of Societies on 24.03.2004* and if anybody is aggrieved by it, he can impeach the same by raising a dispute under the Act.

66. It therefore set aside the letter dt.19.02.2008 of the Registrar of Societies addressed to the 2nd respondent in the said Writ Petition and declared that the information contained in it that the plaintiff is “in vogue” is erroneous.

67. The 2nd respondent in the said Writ Petition filed W.A.No.960 of 2009 and on 18.09.2009, a Division Bench of this Court directed in W.A.M.P.No.1924 of 2009, “*status quo obtained as on to-day*” be

maintained. This order was marked as Ex.P.29 in I.A.No.1061 of 2017. Later, the said Writ Appeal was withdrawn on 06.07.2010. This order was marked as Ex.P.30 in I.A.No.1061 of 2017.

68. Certain other worshippers also challenged the said order dt.24.06.2009 passed in WP.No.16430 of 2008 by filing W.A.No.289 of 2009. In W.A.M.P.No.2729 of 2009, on 09.11.2010, the Division Bench granted “*Status quo obtaining as on to-day with regard to the impugned order shall be maintained by the Writ Petitioner until further orders*”. This order is marked as Ex.P.31 in I.A.No.1061 of 2017.

69. Later, WA.VMP.No.1920 of 2011 was filed to vacate the above order, but the said application was dismissed on 18.04.2012. It is marked as Ex.P.32 in I.A.No.1061 of 2017.

70. Since the very existence of the plaintiff-Society was challenged in the written statement filed by the defendants, and the above documents were marked in I.A.No.1061 of 2017, and in written submissions filed by the defendants/appellants in the said I.A., the point was specifically raised, it was incumbent on the part of the Court below to refer to the contents of the above orders and *prima facie* make up its mind on the point. Though these orders are referred to as part of the contentions raised by the plaintiff in the I.A., the Court below failed to consider the purport of these orders and thus committed grave illegality.

71. It is to be noted that there is no suspension of the order dt.24-06-2009 in W.P.No.16430 of 2008 in W.A.No.960 of 2009 (which was later withdrawn) or in W.A.No.1289 of 2009 wherein the Court directed only “*status quo* obtaining as on today with regard to impugned order shall be maintained”.

72. Therefore the order in W.P.No.16430 of 2008 would *prima facie* continue to operate and the finding recorded therein that ‘*there was a dissolution of the plaintiff-Society in accordance with law*’ continues to subsist and binds the plaintiff and also the Court below, and it could not have taken a different view that the plaintiff-Society is in existence notwithstanding the said order.

73. Though learned counsel for respondents sought to contend that plaintiff-Society is not a party to the order dt.24-06-2009 in W.P.No.16430 of 2008, since the contention in that Writ Petition was that plaintiff-Society was dissolved by a resolution passed on 23-03-2004 and the petitioner therein got transferred to it the assets and liabilities of the plaintiff-Society, there was no question of impleading the plaintiff-Society as a party to that Writ Petition.

74. Admittedly, the plaintiff-Society has till date not challenged the order dt.24-06-2009 passed in W.P.No.16430 of 2008 though it is aware of it. No explanation is forthcoming from the plaintiff-Society why it has not challenged the said order. Therefore *prima facie* it is deemed to have acquiesced in the said order.

75. It appears that the Registrar of Societies, after W.P.No.16430 of 2008 was allowed on 24.06.2009, issued proceedings No.14677/SOC/2013 dt.02.07.2014 implementing the said order and recording that the Resolution 23.03.2004 dissolving the petitioner is deemed to have been taken on record, and the plaintiff-Society is deemed to have been dissolved from the date of passing of the resolution dt.23.03.2004, and necessary entries are made in the concerned records to that effect. This proceeding is marked as Ex.R3 in I.A.No.1061 of 2017.

76. This was questioned in WP.No.19191 of 2014 before this Court by the plaintiff-Society and on 10.07.2014, this Court directed listing of the Writ Petition on 14.07.2014 and directed that till the next date of hearing, *no further proceedings in pursuance of the impugned order dt.02.07.2014 shall be taken up*, pending further orders in the Writ Petition. This order is marked as Ex.P.21 in the I.A.No.1061 of 2017. This order was later extended until further orders on 30.1.2015 in WPMP.No.24050 of 2014. This order is marked as Ex.P.22 in the I.A.No.1061 of 2017.

77. The said orders passed in W.P.No.19191 of 2014 cannot be of any assistance to the plaintiff-Society because even in the said order, there is no suspension of the order dt.24-06-2009 in W.P.No.16430 of 2008 or of the finding therein that plaintiff-Society stood dissolved on 23-03-2004. In fact, the consequential proceeding No.14677/SOC/2013 dt.02.07.2014 merely take note of the order

passed in W.P.No.16430 of 2008 and the direction in W.P.No.19191 of 2014 that “no further proceedings in pursuance of the impugned order dt.02.07.2014 shall be taken up, pending further orders in the Writ Petition”, does not stop the effect of the dissolution of the plaintiff-Society, which had already taken place on 23-03-2004.

78. The Court below has no doubt referred to orders in CRP.No.2692 of 2016 and order in S.L.P.(Civil).No.8387 of 2017 of the Supreme Court of India. The former does not appear to have been marked as an exhibit in the Court below at all, while the latter is marked as Ex.P.14.

79. Copy of the order dt.20.02.2017 in CRP.No.2692 of 2016 has been filed before this Court by the appellants / defendants, and this indicates that it arose out of O.S.No.412 of 2015 on the file of the I Additional Junior Civil Judge, Tenali.

80. The said suit appears to have been filed in November, 2015 for a perpetual injunction by the plaintiff-Society against the Indigenous Churches in India Trust, Hyderabad and others in respect of property located in Tenali, Guntur District, Andhra Pradesh, and an I.A. 585 of 2015 was filed therein for temporary injunction under Order XXXIX Rule 1 and 2, and such injunction was granted by the Trial Court on 29.01.2016. This order was marked as Ex.P.13 in the I.A.No.1067 of 2017.

81. This was challenged by the defendants in the suit in C.M.A.no.2 of 2016 before the II Additional District Judge, Tenali. He allowed the said appeal on 01.06.2016.

82. This was challenged in CRP.No.2692 of 2016 in this Court by the plaintiff herein. The said Revision was dismissed finding that plaintiff-Society was not in existence relying upon the decision dt.24.06.2008 in WP.No.16430 of 2008. This Court also rejected the contention of the plaintiff-Society that it is not a party to the said Writ Petition, and held that even so, it cannot pretend that it had no knowledge about the Resolution dt.23.03.2004 and its implementation.

83. This was questioned by the plaintiff-Society in SLP.(Civil),No.8387 of 2017 and on 27.03.2017, the Supreme Court while adjourning the matter directed that “*in the meantime, status quo as it exists today, shall be maintained*”.

84. The *status quo* as on 27-03-2017, the date when the Supreme Court passed the interim order, would only mean that the plaintiff-Society, which ceased to exist on 23-03-2004 as per the order dt.24-06-2009 in W.P.No.16430 of 2008, would not be in existence. So *prima facie*, as on the date of filing of O.S.No.178 of 2017 on 20-08-2017, also the plaintiff is not in existence.

85. The view of the court below that the order of *status quo* passed by the Supreme Court in S.L.P.(C) No.8387 of 2017 meant that the

order in C.R.P.No.2692 of 2016 is no more in operation, is therefore unsustainable for the aforesaid reasons.

86. I therefore hold on point (b), that *prima facie* the 1st respondent/plaintiff-Society is not in existence on the date of filing of O.S.No.178 of 2017, and the Court below erred in presuming its existence and granting relief to the plaintiff-Society in I.A.No.1061 of 2017.

Point (c) :

87. I shall next consider the question “*whether the plaintiff-Society is in possession prima facie of the plaint schedule property on the date of filing of the suit?*”

88. It is admitted in the plaint that the 2nd defendant was appointed as a Pastor of the suit schedule property by the plaintiff-Society long back, though no appointment letter issued by the plaintiff-Society is filed in the I.A.No.1061 of 2017 by the plaintiff. The plaint schedule property includes *living quarters* for the Pastor also. *In para-III (ii) of the plaint, the plaintiff admitted that the 2nd defendant had not vacated the residential quarter.*

89. In para-III (iii) of the plaint, the plaintiff stated “By merely registering a new Society i.e. 1st defendant, it will not create new rights for the 2nd defendant to *hangover* to the suit schedule premises.” Again in para-III(iv) of the plaintiff, the plaintiff states “Plaintiff submits that the 2nd defendant is only an employee of plaintiff-Society

being a Pastor and he has no independent right to *hangover* to the suit schedule premises. The Prayer Hall and the residential quarter are different. The Prayer Hall is being occupied and prayers are being conducted by the new Pastor appointed by the plaintiff.”

90. From the above pleadings in the plaint, it is clear that there is a Prayer Hall as well as a residential quarter in the plaint schedule property and that it is admitted by plaintiff that 2nd defendant is in possession of the residential quarter, which is part of the suit schedule property. Yet relief of perpetual injunction in the suit and that of temporary injunction in I.A.No.1061 of 2017 has been sought by the plaintiff for the entire plaint schedule property including the residential quarter which forms part of the plaint schedule.

91. The Court below observed in para-8, at page 23 of its order, as under:

“Further, the respondent himself admitted that some of the petition schedule properties are in occupation of the respondent for which he did not file any document or proof, in what capacity he has occupied the petitioner Church and the same is in its possession. His failure to file any document for his occupation of the Church, clearly shows that his possession or occupation is not legal possession and not supported by any authenticated document. On the other hand, as per the transfer orders issued by the petition schedule Society, the respondent No.1 was transferred from petition schedule Church to another Church and his disinclination to join there and creating troubles in conducting prayers by the new Pastor itself clearly shows that the alleged occupation by the respondent Society not legal.... Therefore the contention of the respondent that he himself formed the Society and in occupation of the petition schedule property, conducting prayers by forming the Society cannot be accepted.”

92. These observations of the Court below suggest that the Court below came to the conclusion that it was the 2nd defendant who was in possession of the plaint schedule property but yet decided to grant temporary injunction to the plaintiff-Society.

93. Except filing the sale deed Ex.P-1 dt.07-08-1989, no documents showing possession of the property by the plaintiff-Society as on the date of filing of the suit were filed by it, while admittedly the defendants filed electricity bills up to the date of filing of the suit in I.A.No.1061 of 2017. But the Court below refused to take them into consideration on the ground that since 2nd defendant had been acting as a Pastor prior to the present Pastor, he would be in possession of some of the electricity bills.

94. In my considered opinion, in the absence of any evidence adduced by the plaintiff-Society proving its alleged possession of the plaint schedule property, on the date of filing of the suit, the Court below could not have granted temporary injunction in its favour overlooking the admission in the plaint about 2nd defendant being in possession of the living quarter in the plaint schedule property and also the electricity bills produced by the defendants.

95. More importantly, there is no material filed by plaintiff-Society to show that it had appointed the 2nd defendant as a Pastor for the Church in the plaint schedule property. In the absence of such material, the Court below *prima facie* could not have presumed that he

was an employee of the plaintiff-Society and that the plaintiff-Society had authority to transfer him to another Church.

96. Therefore I hold on Point (c) that plaintiff-Society did not *prima facie* establish its possession of the plaint schedule property on the date of filing of the suit with any certainty and therefore the Court below erred in granting temporary injunction in favour of the plaintiff-Society. Point (c) is answered in favor of the appellants and against the 1st respondent.

CONCLUSION:

97. For all the aforesaid reasons, the order dt.30-11-2018 in I.A.No.1061 of 2017 in O.S.No.178 of 2017 of the Special Judge for SC/ST(PoA) Act-cum-V Additional District and Sessions Judge, Sanga Reddy is set aside, the temporary injunction granted in 1st respondent/plaintiff's favor by it is vacated, and the C.M.A.s are allowed with costs payable by the authorized representative of the 1st respondent to the appellants.

98. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 28.02.2019
Ndr/Vsv/*